IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 427

The Franklin National Bank of Franklin Square,
Appellant,

v.

The People of the State of New York.

On Appeal from the Court of Appeals of the State of New York

BRIEF OF NEW YORK STATE BANKERS ASSOCIATION AS *AMICUS CURIAE*

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This brief is submitted by the New York State Bankers Association as *amicus curiae* with the written consent of all parties to the case pursuant to Rule 27.9(a) of the Rules of this Court.

Interest of *Amicus Curiae*

The New York State Bankers Association is composed of more than 650 banks and trust companies located throughout New York State. Included are 369 national banks. One of the principal functions of the Association is to promote in the public interest sound banking practices. It has been stipulated by the parties to this case that savings deposits (desig-

nated in the stipulation as time deposits) in national banks in New York State represent a substantial percentage of all deposits in such banks. Thus in 1949 a total of 388 national banks in New York State had $10,332,772,000 in demand deposits and $1,812,-125,000 in time deposits (R. 652). The percentage of time deposits to demand deposits is substantially higher outside the City of New York. Specifically, in Nassau County, where appellant's bank is located, national banks in 1949 had total demand deposits of $152,981,000 and time deposits of $124,798,000.

The judgment and decision of the New York Court of Appeals, therefore, affects not only the appellant but all national banks located in New York with respect to a most important if not, indeed, vital phase of their business.

ARGUMENT

I

A fundamental conflict exists between the Federal statutes governing the functions and operations of national banks and Section 258(1) of the New York Banking Law.

The judgment from which this appeal is taken enjoins appellant, a national bank, from advertising or otherwise using the word "saving" or "savings" in relation to its banking or financial business in its dealings with the public (R. 694). The judgment is grounded on Section 258(1) of the New York Banking Law which prohibits the use, except by a savings

bank or a savings and loan association, of the word "saving" or "savings" or their equivalent in the advertising and conduct of banking or financial business.

Section 24 of the Federal Reserve Act, as amended (38 Stat. 273, 12 USC § 371), expressly authorized national banks "to receive time and savings deposits" and Section 24(7) of the National Bank Act, as amended (R. S. 5136, 12 USC § 24(7)) confers upon national banks the power to exercise "all such incidental powers as shall be necessary to carry on the business of banking."

The express statutory authority to receive savings deposits when read in conjunction with the incidental powers conferred by Section 24(7) of the National Bank Act compels the conclusion that national banks are not only authorized to accept savings deposits, but are empowered to do all things appropriate and necessary in order to obtain such deposits, including bringing home to the public that this type of banking service is available to them in national banks.

The appellant's brief clearly demonstrates that both the legislative history and administrative interpretations of the Federal statute point irresistibly to the same conclusion. Granting that this is so, the attempt by the State of New York to enjoin appellant from exercising the powers thus conferred is in direct conflict with the purpose of Congress and paramount Federal laws. It is firmly established that under such circumstances the state statute must yield.

> *Davis* v. *Elmira Savings Bank*, 161 U. S. 275;
> *Easton* v. *Iowa*, 188 U. S. 220;

First National Bank v. *California*, 262 U. S. 366;

Fidelity National Bank & Trust Co. of Kansas City v. *Enright*, 264 Fed. 236.

The majority of the Court of Appeals purport to recognize this principle, but argue that it is not applicable here because no conflict in fact exists. The Court found merely "a superficial, or seeming, contradiction between the phrasing of the two enactments" (R. 687). It disavowed any intention to "prevent defendant from carrying on a particular kind of banking business" (R. 687) and stated that it did not claim for savings banks a monopoly on the receipts of deposits of the " 'savings' type" (R. 688). It justified the restriction upon the use of the word "savings" by other than savings banks and savings and loan associations with the claim that the use of the word by a national bank would constitute a misleading description of its business. Other phrases such as "deception of our people" (R. 687), "deceptive verbiage" (R. 688), "fairness in business transactions" (R. 687), "misleading words" (R. 689), are scattered throughout the opinion.

In the final analysis, however, the Court's attack is not upon the action of the appellant, but upon the Congressional intent. It is Congress which used the words "savings deposits" no less than three times in the statute. It is completely unrealistic for the Court of Appeals to assert that Congress did not intend that national banks should use the identical words found in the statute when advising the public of the banking function it is prepared to furnish. The Court might as well have said that anyone who reads Section 24

of the Federal Reserve Act is in danger of being misled into believing that a national bank is similar to a savings bank.

General Congressional acts are to be interpreted in the light of the policy therein expressed and not upon the statutes of the particular states.

> *Downey* v. *City*, 106 Fed. (2) 69, 73, aff'd 309 U. S. 590;
> *First National Bank* v. *California*, 262 U. S. 366; 369, 370, *supra;*
> *Springfield Inst. for Savings* v. *Worcester F. S. & L. Assn.*, 107 N. E. (2) 315, cert. denied 344 U. S. 884.

The Court of Appeals, in violation of this principle, disregarded the Congressional policy expressed in the Federal statutes and upheld Section 258(1) on its construction of the intention of New York State Legislature. This approach destroys the independence and uniformity of the powers and purposes of national banks which the Federal laws were intended to secure.

> *Easton* v. *Iowa*, 188 U. S. 220, 229, *supra.*

Nor is the existence of a conflict between Federal and state enactments avoided by the claimed salutary motives behind the state statute.

> *Easton* v. *Iowa*, 188 U. S. 220, 238, *supra.*

While the Court of Appeals may disavow any desire to create a monopoly for savings banks and savings and loan associations in deposits of the "savings" type there is no question that New York has

attempted to create such a monopoly with respect to the very word used by Congress in describing the permissible functions of a national bank.

It is no answer to suggest, as does the Court of Appeals, that national banks in New York, other than the appellant's, have found it possible to receive savings deposits by the use in their advertising of expressions which the Court characterizes as "synonymous," such as "special interest account," "thrift account," and "compound interest account". If these expressions are actually synonymous with the word "savings" then it is difficult to perceive how harm can result from the use by national banks of the word "savings." Since Section 258(1) of the New York Banking Law applies not only to the use of the word "savings" but to its "equivalent," it would seem that the state recognizes that the statute cannot be validly applied as written. Otherwise, the synonymous expressions would come within the ban of being equivalent.*

The only true explanation, therefore, of the Court's reasoning is that, despite its statement to the contrary, it did not regard the expressions as synonymous. The whole import of its decision is that the word "savings" had certain connotations which the so-called "synonymous expressions" did not contain. This rationale emphasizes the conflict between the enactments. National banks are in effect required to use different words having different meanings than the term used by Congress in authorizing the function. Congress having authorized national banks to accept savings deposits, the New York statute in

* Mr. Seaton, a State Bank Examiner, testified that these expressions are the "equivalent" of "savings" (R. 63).

effect would require them to advise the public differently.

The Court of Appeals further observes that national banks operating in New York, other than appellant, have not used the word "saving" or "savings." While there is at least one example in the record which contradicts this statement (R. 583), the more important criticism is that a state statute which otherwise conflicts with paramount Federal law is not validated by compliance therewith by national banks operating in the state. National banks by such compliance are not estopped from asserting that the state enactment is unconstitutional, nor does their conduct constitute a waiver of their rights so to do. Cf. *Abie v. Weaver*, 282 U. S. 765, 775-776.

In directing the Court's attention to the conflict between the Federal and state legislation it is not intended to overlook the discrimination against national banks implicit in the state statute and the competitive advantage thereby created in favor of savings banks and savings and loan associations over national banks who compete for the same type of deposit. In addition to the argument in the appellant's brief on these points the Court's attention is respectfully directed to the following considerations.

II

The asserted differences between commercial banks and savings banks are in any event not sufficiently significant to justify the prohibition contained in Section 258(1) of the New York Banking Law.

There appears to be no dispute with respect to the competition between commercial banks, both national and state, and savings banks and savings and loan associations for the "savings type" deposit.

While it is true that savings banks in New York State have continued to be mutual institutions, nevertheless, they have long since departed from their original philanthropic concept (R. 284-285). Growth in size has been accompanied by expansion in functions. Their development has been particularly marked during the past 20 years. Their growth measured by deposits in New York State was in excess of 26% in the five years ended 1950 (R. 651).

The differences that may once have existed between commercial banks and savings banks have tended to disappear as a result of favorable legislation in New York which has gradually enlarged the activities of savings banks and permitted them to encroach further and further into the commercial field of banking.

Savings banks were originally restricted in the scope of their banking and investment powers. When the General Savings Bank Law was adopted as Chapter 371 of the Laws of 1875, all existing mutual sav-

ings banks became subject to its provisions and were brought under the supervision of the Superintendent of Banks. Investments authorized to be made were limited to (1) obligations of the United States and of the State of New York, and with reservations, to those of other states and of cities, counties, towns and villages of New York, and (2) mortgages on real estate situate in New York worth twice the amount loaned thereon, but in no event to exceed 60% of the whole amount of deposits so invested.

Over the years, the Legislature has gradually expanded the powers of mutual savings banks and thereby narrowed the differences which once existed between them and commercial banks.

A brief review of legislation during the last twenty years only will document this contention:

(1) *Amount of deposits received from any one individual:* The General Law adopted in 1875 did not set any limit on the amount of deposits which could be received and the charters of the various mutual savings banks varied in this respect. In 1878, the Legislature restricted the amount which could be deposited by any one person to \$3,000 (Laws of 1878, Chapter 374). This limitation was subsequently increased to \$5,000 (Laws of 1920, Chapter 167); to \$7,500 (Laws of 1925, Chapter 278); and to \$10,000 (Laws of 1951, Chapter 592). It is significant that subdivision 1(b) of Section 237 of the Banking Law provides that in computing the amount of such deposit of an individual there may be excluded all amounts credited to him as a trustee up to a maximum of \$10,000. Presumably he could also be a beneficiary of a trust to the extent of \$10,000 and thus

with his individual account have an aggregate of $30,000 on deposit in one savings bank.

(2) *Branch offices:* Chapter 369 of the Laws of 1914 had restricted a mutual savings bank to one office except for a branch acquired as a result of merger with another mutual savings bank. This restriction was lifted in 1938. In that year, it was provided that, where the principal office of a mutual savings bank was located in a city in excess of 250,000 people, such bank might have one branch within the city (Laws of 1938, Chapter 352, Section 1). In 1945, authorization was given to a mutual savings bank located in a city having a population of more than one million to maintain three branch offices in such city (Laws of 1945, Chapter 298). In 1946 branch banking was further extended by authorization to a mutual savings bank located in a city having a population of more than 30,000 and not more than 250,000 to maintain one branch office in such city, and to a bank in a city having a population of more than 250,000 and not more than one million, to maintain two branch offices, in such city (Laws of 1946, Chapter 788).

(3) *Broadened investment powers:* In the area of authorized investments, the mutual savings banks have demanded and received a continuous succession of permissive legislation to open new channels for use of their vast deposits. These permissive legislative enactments favoring mutual savings banks have been far too numerous to enumerate. Chief among these have been:

1937—Permission to invest in Canadian securities (Laws of 1937, Chapter 686).

1946—Permission to invest in obligations of the International Bank for Reconstruction and Development (Laws of 1946, Chapter 507). Permission to make loans for the modernization and rehabilitation of real estate (Laws of 1946, Chapter 185).

1949—Permission to invest in corporate interest bearing securities not otherwise eligible for investment (Laws of 1949, Chapter 522). Permission to invest in FHA mortgages secured by property located anywhere in the United States (Laws of 1949, Chapter 545).

1952—Permission to invest in the preferred and common stocks of corporation (Laws of 1952, Chapter 705).

National banks have no power to invest in common or preferred stock and in this respect savings banks have broader and less conservative investment powers (Sec 24(7) of National Bank Act, as amended (12 U S C § 24(7)).

(4) *Transmission of funds:* The general powers of mutual savings banks were extended in 1946 so as to permit them to perform a function normally carried on by commercial banks, and other specialized institutions. A mutual savings bank may now receive money for transmission through any bank or through any other corporation having power to so transmit moneys (Laws of 1946, Chapter 184).

(5) *Payroll savings deposits:* Section 258 of the Banking Law was amended by adding a subdivision 5 authorizing acceptance of deposits from an employer

or employee group to be credited to the individual accounts of the group (Laws of 1937, Chapter 463). In order to make this type plan of deposits workable from the standpoint of the employer, who is charged with supervision over the deposits, no passbook is now required in connection with the deposits (Laws of 1949, Chapter 692). Mutual savings banks have thus been empowered to tap a new source of deposit by relaxing the usual safeguards that are inherent in the use of a passbook.

(6) *Safe deposit boxes:* Laws of 1923, Chapter 669, provided that savings banks should have the power to rent boxes for storage of securities and valuable papers only, "in cities of first class." In 1926, this section was amended so as to include all savings banks (Laws of 1926, Chapter 631). The limitation previously imposed upon mutual savings banks to accept only securities and valuable papers in safe deposit boxes controlled by them was extended to include jewelry (Section 234(9) of the Banking Law). The difficulty in supervising the character of property placed by customers in safe deposit boxes is apparent.

(7) *Establishment of authorization to issue life insurance policies:* In 1939, the Legislature granted the authority to savings banks to establish insurance departments and to issue life insurance policies in an amount not in excess of $1,000 (Laws of 1939, Chapter 882, Article IX-D). Allegedly, this bill was for the purpose of providing direct control between the insurer and the policyholder without the intervention of an agent or broker. In 1942, the above section was amended to extend the maximum sum allowable on

individual policies from $1,000 to $3,000 (Laws of 1942, Chapter 434). This amount was again increased in 1948 to $5,000 (Laws of 1948, Chapter 296).

(8) *Further legislation:* A list of other permissive legislation in the savings bank field includes:

1934—Granted right to assume and discharge obligations to Federal Deposit Insurance Corp. as required for deposit insurance. (Laws of 1934, Chapter 503).

Granted right to become member of Federal Reserve Bank (Laws of 1934, Chapter 503). Authorized creation of Savings Bank Trust Company (Laws of 1934, Chapter 255).

1936—Permitted to make F. H. A. insured loans (Laws of 1936, Chapter 805).

1938—Granted power to act as agent in sale of travelers' checks (Laws of 1938, Chapter 352, Section 1).

1940—Permitted to invest in certificates of investment in savings banks life insurance fund, and in certificates of contribution to the surplus fund of its life insurance department (Laws of 1940, Chapter 449, Section 3).

1945—Permitted to invest in obligations of any corporation organized under any law of this state for the purpose of dealing in housing projects (Laws of 1945, Chapter 319).

1946—Right to invest in mortgages extended to permit investments in property upon which improvements were under construction for business, manufacturing, agricultural, or residential purposes (Laws of 1946, Chapter 560).

It is apparent from the foregoing that the original concept of a savings bank as a mutual organization, the fundamental purpose of which was the protection of small deposits, has gradually tended to disappear. Savings banks now perform many of the functions of commercial banks. They have grown in size in the State of New York to a point where in 1950 their aggregate deposits were $11,102,297,000 (R. 651). They actively compete with national banks for the same type of savings deposits (R. 155, 411).

While expanding the powers of savings banks and permitting them to encroach more and more in the field of commercial banks the state, nevertheless, has continued to permit savings banks and savings and loan associations to monopolize the word "savings". With the passage of time, therefore, the prohibitions contained in Section 258(1) of the Banking Law have more and more tended to assume the form of an artificial and unreasonable barrier which is not only unconstitutional in its operation but preventive of the free and healthy growth of national banking service to the community.

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III

By granting savings and loan associations and savings banks the exclusive privilege of using the word "savings" in their dealing with the public Section 258(1) of the Banking Law has created an arbitrary and unreasonable classification between savings banks and savings and loan associations on the one hand and national banks on the other.

The general rule in determining whether or not there has been a proper classification for purposes of exercising police power by a state is that the classification must be reasonable and not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike.

> *Hartford Steam Boiler Inspection and Insurance Company* v. *Harrison*, 301 U. S. 459;
> *F. S. Royster Guano Co.* v. *Commonwealth of Virginia*, 253 U. S. 412, 415;
> *Air-Way Electric Appliance Corp.* v. *Day*, 266 U. S. 71, 85.

The forerunner of Section 258 of the New York Banking Law here in issue, was enacted originally in 1858. Chapter 132, Section 1, read as follows:

> "It shall not be lawful for any bank, banking association or individual banker, authorized to issue circulating notes, by the laws of this state, established in any city or village where a chartered savings bank is located to advertise or

put forth a sign as a savings bank, and any bank, banking association or individual banker, which shall offend against these provisions shall forfeit and pay for every such offense the sum of one hundred dollars for every day such offense shall be continued, to be sued for and recovered in the name of The People of the State, by the district attorneys of the several counties in any court having cognizance thereof, for the use of the poor, chargeable to said county in which such offense shall be committed."

The provision continued substantially the same until 1905 when by Chapter 564, Laws of 1905, the Section was amended to specifically prohibit the use of the word "savings". *Contemporaneously building and loan associations were included for the first time within the privileged class of those permitted to use the forbidden word.* Thus, after a period of forty-seven years during which mutual savings banks alone were allowed to hold themselves out as "savings" banks, savings and loan associations were given a similar privilege.

In 1914, national banks were specifically added to the list of banking institutions barred from either holding themselves out as savings banks or using the word "savings" in their dealings with the public (Chapter 369, Section 279, Laws of 1914). It is unnecessary to determine whether Section 258(1) of the Banking Law as amended in 1914 was in conflict with the authority conferred upon national banks at that time to receive time deposits. It was not until 1927 that the words "savings deposits" were expressly included in the authorizing Federal statute (44 Stat. 1232).

While the majority of the Court of Appeals states that the character and purposes of savings and loan associations are under New York laws so similar to those of savings banks as to call for the same kind of protection it is appropriate to note that the word "savings" when applied to a savings and loan association has quite a different connotation than when applied to a savings bank. It is only necessary to observe the fundamental differences in the relationship between the savings bank and its depositors and the savings and loan association and its shareholders to realize that the meaning of the word "savings" as used in the statute is not the narrow one which the court below attributed to the Legislature.

The relationship between a mutual savings bank and its depositors is that of creditor and debtor. *People* v. *Mechanics and Traders Savings Institution* (1893), 92 N. Y. 7. In that case this Court said:

> "The primary relation of a depositor in a savings bank, to the corporation, is that of creditor and not that of a beneficiary of a trust. The deposit when made becomes the property of the corporation. The depositor is a creditor for the amount of the deposit, which the corporation becomes liable to pay according to the terms of the contract under which it is made. When payment is made, the claim of the depositor is extinguished and he has no further claim upon the funds or assets of the bank. Upon insolvency the assets and property of the corporation, as in the case of other corporations, is a trust fund for the payment of creditors, and depositors we think stand as other creditors having no greater, but equal rights to be paid ratably out of the insolv-

> ent estate. The fact that savings banks are public agencies created by law to receive and invest the money deposited in them does not change the status of the depositors, upon insolvency of the bank, from that of creditors to that of beneficiaries of a trust, so as to subject the assets of the bank to the payment in the first instance of other creditors."

The relationship between a savings and loan association and its shareholders, however, is that of a corporation and its stockholders. This is true whether the savings and loan association is state or federally chartered. (See: New York Banking Law, Section 378; 12 USC Sec. 1464(b)). The differences in legal relationship are significant. A savings and loan association does not receive deposits, it merely sells shares. Its "capital" consists of its "savings accounts". The so-called "depositors" never become creditors but only shareholders, and, as such, never can sue for payment as a creditor. The holders of "savings accounts" may vote on corporate matters, having one vote for each $100 of withdrawal value of their respective "accounts". The method of payment is regulated by statute so that there is no absolute right to payment as there is in the case of the savings deposits received by national banks and savings banks. (Rules and Regulations of the Federal Savings and Loan Association, Chapter I(C), Title 24, Code of Federal Regulations).

In contrast to savings and loan associations the account in a national bank which is authorized "to receive time and savings deposits and to pay interest on the same" is substantially similar to an account in a savings bank. Like the savings bank, the relation

between the bank and its depositors is that of creditor and debtor.

We submit, therefore, that once having opened the door to the use of the word "savings" and the solicitation of "savings accounts" by savings and loan associations, the Legislature, in effect, removed whatever basis may have previously existed for restricting the word to a particular type of banking operation. The classification made in Section 258(1) ceased to have any objective validity at that time. The wide and substantial difference between savings accounts in savings banks and national banks on the one hand and in savings and loan associations on the other destroys any basis for claiming that the word "savings" has a peculiar or limited meaning appropriate only to savings banks.

IV

The Legislature of the State of New York has in effect abandoned the original objective sought to be obtained under Section 258(1) by authorizing the deposit of the savings of school children in state or national banks having an interest department.

As has been seen, the Court of Appeals has placed its entire justification for Section 258(1) of the Banking Law on the purpose of preventing a deception from being practiced upon the public.

In 1904 a provision was added to Section 258 of the Banking Law permitting the principal or superintendent of the school to accept deposits of children to be placed in savings banks only (Chapter 568, Laws

of 1904). This provision was later enlarged to cover situations where there was no regularly established office of a savings bank in a town or city where the school was located. Under such conditions the money might "not later than the day following the collection (a) be deposited in any trust company or state or national bank located in the state and having an interest department, or (b) be used for the purchase of shares in any savings and loan association located in the state * * *".

It was further provided that even if a savings institution should be opened in that city or town, savings already deposited in institutions other than savings banks might continue to remain there (Laws of 1909, Chapter 497, Sec. 160).

This provision existed as Sub-section 2 of Section 258 of the New York Banking Law up to 1952.

In 1952 the New York Legislature finally placed all banks, whether savings or commercial, on precisely the same footing with respect to the receipt of savings collected from school children.

By Chapter 546, Laws of 1952, money collected from school children could "be deposited in some savings bank in the state to be used for purchase of shares in any savings and loan association organized under this law or under the laws of the United States, whose principal office is located in the State of New York, *or be deposited in any trust company or state or national bank located in the state and having an interest department.*" (Italics supplied.)

The classification contained in Section 258(1) has, therefore, been completely abandoned for children

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making deposits through school savings programs. It is difficult to conceive how any distinction between savings accounts in national banks and savings accounts in savings banks can any longer have any reasonable validity. In the case of deposits of the funds of school children, not only is the depositor divorced from choosing a depository, his savings may be placed in any banking institution without his knowledge. It is clear that the basis for the original enactment of Section 258(1) no longer exists in fact or law.

CONCLUSION.

A direct conflict exists between Section 258(1) of the New York Banking Law and the paramount laws of the United States which authorize national banks to receive savings deposits. Section 258(1) also discriminates against national banks and impedes their ability to compete with state banking institutions. National banks are thereby rendered less effective in providing the banking and financial services for which they were designed. All national banks in the State of New York are affected. The judgment appealed from should, therefore, be reversed.

Respectfully submitted,

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